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SMALL ENTITY COMPLIANCE GUIDE

Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage

FCC 23-31
WC Docket No. 18-155
Adopted April 20, 2023

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
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I. OBJECTIVES OF THE PROCEEDING

In the *Access Arbitrage Second Report and Order* in WC Docket No. 18-155, the Commission acted to reduce financial incentives for arbitrage activities that harm consumers, undermine broadband deployment, and distorts competition amongst carriers and access providers.¹

Access Stimulation is a form of arbitrage that occurs when a Local Exchange Carrier (LEC) partners with high-volume calling service providers, such as “free” conference calling providers or chat line services, to inflate the number of calls directed to those services as a means of increasing both the LEC’s access charge revenue and that of the Intermediate Access Providers they use to deliver calls to their networks. LECs and high-volume calling service providers engage in Access Stimulation to take advantage of intercarrier compensation rates originally designed to ensure people living in rural areas have access to affordable telephone service.

The *Access Arbitrage Second Report and Order* expands the Commission’s Access Stimulation Rules to prohibit Intermediate Access Providers from charging interexchange carriers (IXCs) tariffed terminating tandem switching and transport access charges for traffic bound for Internet Protocol Enabled Service (IPES) Providers engaged in Access Stimulation as defined in the Commission’s rules. The Commission also expanded the definition of Access Stimulation to include IPES Providers to prevent carriers from evading the current rules by adding an IPES Provider into the call path. In addition, the Commission provides further clarification by either defining or updating the definitions of Intermediate Access Providers, IPES providers and end office equivalent, as well as provide additional guidelines regarding appropriate filing and assessment of charges.

Small businesses providing the types of services discussed in the *Access Arbitrage Second Report and Order* will benefit from the clarity the adopted rules provide. This is particularly the case for IPES providers at risk of violating the adopted rules, as they are typically smaller businesses. Additionally, the Commission believes the rule revisions will serve the public interest by reducing carriers’ incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) for the purpose of collecting inflated, tariffed terminating tandem switching and transport access charges from IXCs. The rules and revisions contained in the *Access Arbitrage Second Report and Order* strike an appropriate balance between addressing harmful Access Stimulation conduct on the part of certain entities and avoiding negative effects on providers that are not engaged in such activity.

II. COMPLIANCE REQUIREMENTS

In the *Access Arbitrage Second Report and Order*, the Commission adopted rule revisions to deter arbitrage of the access charge system by closing loopholes exploited by providers manipulating call traffic or call flows as a means of inflating the amount of access charges the LECs can bill IXCs, a practice which can ultimately lead to increased costs for the IXCs’ end-user customers. In particular, modifications and changes to the Commission’s rules were made to parts 51, 61 and 69 of Title 47 of the Code of Federal Regulations. The information below provides a summary of the compliance requirements set forth in the adopted rules.

A. Additional Provisions Applicable to Access Stimulation Traffic [47 CFR § 51.914]

The Commission adopted additional reforms by clarifying actions parties engaged in Access Stimulation must take regarding billing, notification and their financial responsibilities for service charges. This is achieved through amendments to section 51.914, by revising paragraphs (a) and (b), redesignating paragraphs (c), (d), and (e) as paragraphs (e), (f), and (g), with revisions, and adding paragraphs (c) and (d).

¹ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Second Report and Order, FCC 23-31 (rel. Apr. 21, 2023) (*Access Arbitrage Second Report and Order* or *Order*).

A LEC engaged in Access Stimulation as defined in 47 CFR § 61.3(bbb), shall, within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later:

- not bill any IXC for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport charges for any traffic between such LEC's terminating end office or equivalent and the associated access tandem switch; and *[47 CFR § 51.914(a)(1)]*
- designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching or terminating switched access tandem transport services to the LEC engaged in Access Stimulation; and *[47 CFR § 51.914(a)(2)]*
- assume financial responsibility for any applicable Intermediate Access Provider's charges for terminating switched access tandem switching or terminating switched access tandem transport services for any traffic between such LEC's terminating end office or equivalent and the associated access tandem switch. *[47 CFR § 51.914(a)(3)]*

A LEC engaged in Access Stimulation as defined in 47 CFR § 61.3(bbb), shall, within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and IXCs with which it does business of the following:

- that it is a LEC engaged in Access Stimulation; and *[47 CFR § 51.914(b)(1)]*
- that it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services to the LEC engaged in Access Stimulation; and *[47 CFR § 51.914(b)(2)]*
- that it will pay for those services as of that date. *[47 CFR § 51.914(b)(3)]*

An IPES Provider, as defined in § 61.3(eee), engaged in Access Stimulation, as defined in § 61.3(bbb), then within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later: *[47 CFR § 51.914(c)]*

- shall designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the IPES Provider engaged in Access Stimulation; and further *[47 CFR § 51.914(c)(1)]*
- may assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such IPES Provider's terminating end office or equivalent and the associated access tandem switch; and *[47 CFR § 51.914(c)(2)]*
- the Intermediate Access Provider shall not assess any charges for such services to the IXC. *[47 CFR § 51.914(c)(3)]*

If an Intermediate Access Provider receives notice that it has been designated to provide terminating switched access tandem switching or terminating switched access tandem transport services to a LEC or IPES Provider engaged in Access Stimulation, directly, or indirectly through a LEC, and the LEC engaged in Access Stimulation, then that LEC must pay, or the IPES Provider engaged in Access Stimulation may pay, for the terminating access service from the Intermediate Access Provider. The Intermediate Access Provider is prohibited from billing the IXC for interstate or intrastate terminating switched access tandem switching or for terminating switched access tandem transport service for traffic bound for the LEC or IPES Provider but, instead, must bill the LEC or may bill the IPES Provider for those services. *[47 CFR § 51.914(e)]*

Any LEC that is not itself engaged in Access Stimulation, but serves as an Intermediate Access Provider with respect to traffic bound for a LEC or an IPES Provider engaged in Access Stimulation, will not itself be deemed a LEC engaged in Access Stimulation. *[47 CFR § 51.914(f)]*

B. Definition of Access Stimulation [47 CFR § 61.3(bbb)]

In order to address the loopholes that emerged through the adoption of new practices by access stimulators circumventing the Commission's existing rules, the *Access Arbitrage Second Report and Order* expanded the definition of what constituted Access Stimulation and also accounted for the practice of inserting IPES Providers into the call flow. Additionally, the Commission clarified the definitions of Intermediate Access Provider, IPES Provider and End Office Equivalent, which is further discussed in sections C, D and E below.

Access Stimulation is defined as occurring when:

- A competitive LEC, rate-of-return LEC, or IPES Provider serving end users has a revenue-sharing agreement based on access charge revenues that results in a net payment to another party and also has either: (i) at least a 3:1 interstate terminating-to-originating traffic ratio in an end office or equivalent in a calendar month or; (ii) 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year for such end office or equivalent. *[47 CFR § 61.3(bbb)(1)(i)]*
- A competitive LEC or IPES Provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office or equivalent in a calendar month. No revenue-sharing agreement is required under this test. *[47 CFR § 61.3(bbb)(1)(ii)]*
- A rate-of-return LEC has an interstate terminating-to-originating traffic ratio of at least 10:1 in an end office or equivalent in a three-calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in the same end office in the same three-calendar month period. These factors will be measured as an average over the three-calendar month period. *[47 CFR § 61.3(bbb)(1)(iii)]*

An access-stimulating competitive LEC serving end users or an access-stimulating IPES Provider serving end users will continue to be deemed as engaged in Access Stimulation until it terminates all revenue-sharing agreements and does not exceed the 3:1 traffic ratio trigger or the minutes of use growth trigger or it no longer exceeds the 6:1 ratio test for six consecutive months and does not meet any other Access Stimulation definition. *[47 CFR § 61.3(bbb)(2)]*

A rate-of-return LEC serving end users that has engaged in Access Stimulation will continue to be deemed as engaged in Access Stimulation until it terminates all revenue-sharing agreements and does not otherwise engage in Access Stimulation or its interstate terminating-to-originating traffic ratio falls below 10:1 for six consecutive months and its monthly interstate terminating minutes-of-use in an end office or equivalent falls below 500,000 for six consecutive months, and it does not otherwise engage in Access Stimulation. *[47 CFR § 61.3(bbb)(3)]*

Each competitive LEC, rate-of-return LEC or IPES Provider must calculate its interstate terminating-to-originating traffic ratio for an end office or equivalent. *[47 CFR § 61.3(bbb)(5)]*

C. Definition of Intermediate Access Provider [47 CFR §§ 51.914; 61.3(ccc); 69.4(l); 69.5(b)]

An Intermediate Access Provider is any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final IXC in a call path and:

- A LEC engaged in Access Stimulation; or [47 CFR § 61.3(ccc)(1)]
- A LEC delivering traffic to an IPES Provider engaged in Access Stimulation; or [47 CFR § 61.3(ccc)(2)]
- An IPES Provider engaged in Access Stimulation where the entity delivers calls directly to the IPES Provider. [47 CFR § 61.3(ccc)(3)]

D. Definition of IPES Provider [47 CFR §§ 51.914, 61.3(eee), 69.4(l) and 69.5(b)]

An IPES Provider is a provider offering a service that: (1) enables communications; (2) requires a broadband connection from the user's location or end to end; (3) requires Internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the PSTN or that originate from an Internet Protocol service.

E. Definition of End Office Equivalent [47 CFR §§ 51.914, 61.3(fff), 69.3(e)(12)(iv) and 69.4(l)]

An End Office Equivalent is the geographic location where traffic is delivered to an IPES Provider for delivery to an end user. This location shall be used as the terminating location for purposes of calculating terminating-to-originating traffic ratios, as provided in section 61.3.

F. Charges to be Filed [47 CFR § 69.4(l)]

In order to ensure the requirement to not bill certain carriers is mandatory, the Commission amended section 69.4(l) of its rules. As a result, a competitive LEC or a rate-of-return LEC engaged in Access Stimulation, the Intermediate Access Provider it subtends, or an Intermediate Access Provider that delivers traffic directly or indirectly to an IPES Provider engaged in Access Stimulation are prohibited from billing an IXC for interstate or intrastate terminating tandem switched access or terminating switched access transport charges for any traffic between such competitive LEC's, rate-of-return LEC's, or IPES Provider's end office or equivalent and the associated access tandem switch.

G. Persons to be Assessed [47 CFR § 69.5(b)]

The *Access Arbitrage Second Report and Order* also clarifies that it is "IXCs" and not "LECs" that are not being charged access charges under the Commission's Access Stimulation Rules. The revised sections set forth that a carrier's carrier charges shall be computed and assessed upon all IXCs that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that:

- Competitive LECs or rate-of-return LECs engaged in Access Stimulation are prohibited from billing IXCs for terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges when the terminating traffic is destined for a competitive LEC, rate-of-return LEC, or is destined, directly or indirectly, for an IPES Provider engaged in Access Stimulation. [47 CFR § 69.5(b)(1)]
- Intermediate Access Providers are prohibited from billing IXCs for terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges when the terminating traffic is destined for competitive LECs or rate-of-return LECs engaged in Access Stimulation, or is destined, directly or indirectly, for an IPES Provider engaged in Access Stimulation. [47 CFR § 69.5(b)(2)]

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Access Arbitrage Second Report and Order* imposes the following new notice requirements on LECs and IPES Providers engaged in Access Stimulation. The effective date of the following requirements is delayed until the Commission receives approval from the Office of Management and Budget (OMB) to collect this information. The Commission will release a Public Notice announcing the effective dates and compliance dates for the following requirements:

- If an IPES Provider is engaged in Access Stimulation, it must, within 45 days after the effective date of this paragraph (51.914(d)) – which is 30 days after the Commission publishes the notification of OMB approval in the *Federal Register*, or, with respect to those entities that later engage in Access Stimulation, within 45 days from the date such entities commence Access Stimulation, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business:
 - a. That it is an IPES Provider engaged in Access Stimulation; and²
 - b. That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services directly, or indirectly through a local exchange carrier, to the IPES Provider engaged in Access Stimulation; and³
 - c. Whether the IPES Provider will pay for those services as of that date.⁴

LECs or IPES Providers may need to modify their internal record-keeping practices to provide the requisite notification.

- Any LEC or IPES Provider that is no longer engaged in Access Stimulation must file notice with affected IXCs and Intermediate Access Providers, as well as with the Commission, notifying them of the end of its access-stimulating status.⁵

IV. IMPLEMENTATION DATE

The *Access Arbitrage Second Report and Order* and its requirements for LECs and IPES Providers engaged in Access Stimulation became effective on July 3, 2023, except for the notice requirements adopted in 47 CFR §§ 51.914(d) and 51.914(g) which require approval by OMB under the Paperwork Reduction Act.⁶

V. INTERNET LINKS

A copy of the *Access Arbitrage Second Report and Order* is available at:

<https://docs.fcc.gov/public/attachments/FCC-23-31A1.pdf>.

A copy of the Federal Register Summary of the *Access Arbitrage Second Report and Order* is available at:

<https://www.govinfo.gov/content/pkg/FR-2023-06-01/pdf/2023-10661.pdf>.

² 47 CFR § 51.914(d)(1).

³ *Id.* at § 51.914(d)(2).

⁴ *Id.* at § 51.914(d)(3).

⁵ *Id.* at § 51.914(g).

⁶ 47 CFR § 51.914(d); (g).